

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

STEVEN DE COSTA, in his ) Civil No.  
representative Capacity as ) 03-00598 DAE/LEK  
Chairperson of the Board of )  
Trustees of United Public )  
Workers, AFSCME, Local 646, )  
AFL-CIO, Mutual Aid Fund )  
Trust, Real Party in Interest )  
United Public Workers Union, )  
AFSCME, Local 646, AFL-CIO, )  
Plaintiffs, )  
vs. )  
GARY W. RODRIGUES, )  
Defendant. )

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## DEPOSITION OF STEVEN DE COSTA

Taken on behalf of Defendant Gary W. Rodrigues at  
the Law Office of Eric A. Seitz, 820 Mililani  
Street, Suite 714, Honolulu, Hawaii, commencing at  
9:30 a.m. on September 28, 2007, pursuant to  
Notice.

Before: WILLIAM T. BARTON, RPR, CSR NO. 391

EXHIBIT 5

<p>1 APPEARANCES:</p> <p>2 For Plaintiff CHARLES A. PRICE, ESQ. 3 Koshiba Agena &amp; Kubota Suite 2600, Pauahi Tower 4 1003 Bishop Street Honolulu, Hawaii 96813 5 (808) 523-3900</p> <p>6 For Defendant Gary W. Rodrigues 7 ERIC A. SEITZ, ESQ. 8 920 Mililani Street, Suite 714 Honolulu, Hawaii 96813 9 (808) 533-7434</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 (Disclosure presented to Counsel.)</p> <p>2 STEVEN DE COSTA,</p> <p>3 Called as a witness by Defendant Gary W.</p> <p>4 Rodrigues, having been first duly sworn, was</p> <p>5 examined and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. SEITZ:</p> <p>8 Q. Please state your full name.</p> <p>9 A. Steven L. DeCosta.</p> <p>10 Q. And Mr. DeCosta, what is your residence</p> <p>11 address?</p> <p>12 A. 128 Muluniu Avenue, Kailua, Hawaii.</p> <p>13 Q. Have you ever had your deposition taken</p> <p>14 before?</p> <p>15 A. No.</p> <p>16 Q. I'm sure your attorney has gone over</p> <p>17 with you what happens in a deposition. But I just</p> <p>18 need to go over a couple things for the record, to</p> <p>19 make sure that it's clear that you've understood,</p> <p>20 okay?</p> <p>21 A. Yes.</p> <p>22 Q. First of all, you understand the</p> <p>23 testimony you're giving this morning is under</p> <p>24 oath, correct?</p> <p>25 A. Yes.</p>
<p>1 I N D E X</p> <p>2 EXAMINATION</p> <p>3 By Mr. Seitz</p> <p>4 STEVEN DE COSTA</p> <p>5 Deposition Exhibits</p> <p>1 Administrative Services Agreement 18</p> <p>2 May 23, 2004 Minutes 28</p> <p>3 May 12, 1994 letter 35</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 Q. And as you're doing, we need to get</p> <p>2 audible responses from you because the court</p> <p>3 reporter is writing everything down.</p> <p>4 So please continue to answer out loud as</p> <p>5 opposed to gestures or nods or uh-huh</p> <p>6 (affirmative), something like that, because then</p> <p>7 the record will not be clear. Okay?</p> <p>8 A. Okay.</p> <p>9 Q. Also we want to make it easier for the</p> <p>10 court reporter by not having more than one person</p> <p>11 speak at a time. So I will wait until you finish</p> <p>12 your answer. And I would appreciate if you would</p> <p>13 wait until I finish my question before you answer,</p> <p>14 that way it will be easier for him to get a</p> <p>15 complete record.</p> <p>16 A. All right.</p> <p>17 Q. You will be given an opportunity to read</p> <p>18 a transcript of these proceedings. And to make</p> <p>19 any changes that you feel are necessary.</p> <p>20 However, you have to understand that if</p> <p>21 you choose to make any changes, that somebody</p> <p>22 later can comment upon the fact that you changed</p> <p>23 your testimony. Do you understand that?</p> <p>24 A. Yes.</p> <p>25 Q. And also, so that we get as good a</p>

<p>1 record here as possible, I want to ask you to  2 please do not attempt to answer any question that  3 you don't understand.</p> <p>4 So if I ask you a question which is  5 unclear, ask me to repeat it. If you don't  6 understand, I want to make sure before you answer  7 that you have understood what it is I'm asking,  8 okay?</p> <p>9 A. Yes.</p> <p>10 Q. If you need to take a break at any time,  11 we can do that. I don't imagine I will be more  12 than about two hours but I may even be less than  13 that. We'll see, all right?</p> <p>14 A. Okay.</p> <p>15 Q. What have you done to prepare for this  16 deposition? And by that I mean, first of all,  17 have you reviewed any documents or any records?</p> <p>18 A. No.</p> <p>19 Q. You've looked at nothing?</p> <p>20 A. No.</p> <p>21 Q. Did you speak with your attorney to  22 prepare for the deposition? Mr. Price?</p> <p>23 A. Mr. Price? We went over. We didn't go  24 over extensively.</p> <p>25 Q. I'm not going to ask you what you talked</p>	Page 6	<p>1 A. No, one was just an associate of arts.  2 Q. And tell me how are you currently  3 employed?</p> <p>4 A. I'm with the State Department of  5 Transportation. I'm at the Airport Maintenance  6 Division.</p> <p>7 Q. How long have you worked with the  8 Airport Maintenance Division?</p> <p>9 A. Fourteen years.</p> <p>10 Q. And what is your position there?</p> <p>11 A. I'm an electrician one.</p> <p>12 Q. Prior to working at the airport for the  13 Airport Maintenance Division, how were you  14 employed?</p> <p>15 A. I was with -- I was an electrical field,  16 in the contracting field with, I think was the HEW  17 union, Hawaii Electrical Workers.</p> <p>18 Q. And when did you first become a member  19 of the UPW if you recall?</p> <p>20 A. I started in 1975.</p> <p>21 Q. What were you doing at that time?</p> <p>22 A. I was working for the state at the state  23 hospital in Kaneohe.</p> <p>24 Q. And have you maintained your membership  25 in UPW even though you were working outside state</p>	Page 8
<p>1 about. But you spoke with him?</p> <p>2 A. Yes.</p> <p>3 Q. Other than Mr. Price, did you talk with  4 anybody else about this deposition or about what  5 was going to happen here?</p> <p>6 A. No.</p> <p>7 Q. Would you please briefly tell me what  8 your educational background is, starting from high  9 school?</p> <p>10 A. I graduated from Kailua High School in  11 1971. Then '71 to '73 I went to Honolulu  12 Community College. And then right after that I  13 went to the UH for six months. Then I think I  14 went back to school in the eighties for another  15 two years and went back to Honolulu Community  16 College.</p> <p>17 Q. Along the way did you receive any  18 certificates or degrees?</p> <p>19 A. Yes.</p> <p>20 Q. What certificates or degrees?</p> <p>21 A. Two year degree from Honolulu Community  22 College and another degree from Honolulu Community  23 College, electrical work.</p> <p>24 Q. Okay. Both of them were in the  25 electrical field?</p>	Page 7	<p>1 employment?</p> <p>2 A. No, 19 -- in the, I think it was '82,  3 '84 I got out. I went to construction. Went  4 back to school.</p> <p>5 Then in the last 14 years, whatever date  6 that was, that I went back to the union with the  7 state.</p> <p>8 Q. When was the first time you held any  9 position with the union as a union steward or any  10 other position?</p> <p>11 A. That's back in the 1970s. I was a shop  12 steward.</p> <p>13 Q. And what other positions other than shop  14 steward have you held?</p> <p>15 A. Shop steward, chief steward. Been on  16 Oahu division board. State Executive Board for  17 UPW.</p> <p>18 Currently I'm on the -- I'm the UPW  19 state president. I'm also with the AFL-CIO  20 Executive Board.</p> <p>21 Q. When did you first serve on the State  22 Executive Board of UPW?</p> <p>23 A. Say about ten years ago. Roughly give  24 or take a few years, about ten years ago.</p> <p>25 Q. Approximately 1997, 1998?</p>	Page 9

	Page 10		Page 12
1	A. Yes.	1	board of the Mutual Aid Fund Trust, had you had
2	Q. And who chose you or elected you to be	2	any contact or familiarity with that entity? Did
3	on the State Executive Board?	3	you know anything about it?
4	A. The members. The members vote for us.	4	A. When I'm on a state executive board.
5	Q. So you were elected by the Oahu	5	Q. And how did you hear about the Mutual
6	division?	6	Aid Fund Trust prior to being on the actual Board
7	A. Yeah. The Oahu -- members of the island	7	of Trustees?
8	8 of Oahu.	8	A. It's a thing that our members can sign
9	9 Q. And have you been on the Executive Board	9	up to be MAF member. I think it's \$1, \$2 dollars
10	10 consistently since you were first elected in about	10	a month that you can put in from your paycheck,
11	11 1997, 1998?	11	12 and you can receive whatever benefits from the MAF
12	A. Yes.	12	trust.
13	Q. And now you are the president; is that	13	Q. Do you know when the trust was
14	14 correct?	14	established?
15	A. Yes.	15	A. Not offhand.
16	Q. Prior to being president have you held	16	Q. Do you know who was involved in
17	17 any other offices on the Executive Board?	17	establishing it when it was first started?
18	A. No.	18	A. No.
19	Q. When were you elected president?	19	Q. What is the purpose of the Mutual Aid
20	A. Four years ago.	20	Fund Trust?
21	Q. And who was the president just prior to	21	A. The Mutual Aid Fund Trust deals with a
22	22 you?	22	lot of hospitalization of our members.
23	A. I think it was his name was George	23	Hospitalization. And they go into the hospital
24	24 Yasumoto.	24	and then after -- it allows you, I think \$25, \$30
25	Q. And prior to George Yasumoto do you	25	per day it pays you from this trust.
	Page 11		Page 13
1	1 know who the president was?	1	Q. Is it a voluntary participation?
2	2 A. Adaline Uhrle.	2	A. Yes, it's voluntary.
3	3 Q. When does your term as president	3	Q. Prior to becoming the chairman of the
4	4 expire?	4	Board of Trustees, did anybody give you any
5	5 A. It's a three year term. So I was just	5	instructions or guidance as to what your duties
6	6 elected. This is my first year. So I believe	6	would be?
7	7 2009.	7	A. To be the Chairperson of this MAF?
8	8 Q. So this is actually your second term --	8	Q. Yes.
9	9 first year of your second term; is that correct?	9	A. Offhand -- the Chairperson comes with
10	10 A. Yes.	10	the position of being a state president. So I
11	11 Q. You also hold a position with a Mutual	11	just -- we have an agenda, and we just conduct it
12	12 Aid Fund Trust; is that correct?	12	in the meeting.
13	13 A. Yes, sir.	13	Q. Did anyone ever give you any directions
14	14 Q. When did you first hold any position	14	or instructions or guidance about what it means to
15	15 with the Mutual Aid Fund Trust?	15	be a trustee?
16	16 A. I believe it was this term.	16	A. Offhand, no, I don't remember.
17	17 Q. And when were you selected to be on the	17	Q. Prior to becoming the Chairperson of the
18	18 Board of Trustees of the trust?	18	Mutual Aid Fund Trust, had you ever been a trustee
19	19 A. It comes automatically when you're the	19	of any organization before?
20	20 state president. You become the Chairperson of	20	A. No.
21	21 this committee.	21	Q. Do you know what the term "fiduciary"
22	22 Q. You've been the Chairperson since you	22	means?
23	23 were first elected president?	23	A. I've heard about it, yes.
24	24 A. Yes. Which is three years ago.	24	Q. What is your understanding, as you sit
25	25 Q. Okay. Prior to being placed on the	25	here today, about what that term means?

<p style="text-align: right;">Page 14</p> <p>1 A. Well, it was mentioned it was a 2 fiduciary -- everybody on the board has a 3 fiduciary responsibility about conducting the 4 meetings and the legality of it all, the legal 5 part of the paperwork and so forth.</p> <p>6 Q. And do you know to whom you owe that 7 duty or obligation?</p> <p>8 A. To our members.</p> <p>9 Q. Have you ever received any instruction 10 of any sort from any lawyers or anybody else as to 11 what it means to be a fiduciary?</p> <p>12 A. I believe we went through over it in a 13 couple of the meetings, but offhand I can't tell 14 you if we met with a lawyer or not.</p> <p>15 Q. Have you ever read any of the documents 16 that formed the basis for the Mutual Aid Fund 17 Trust, the trust documents themselves?</p> <p>18 A. Not recently.</p> <p>19 Q. Did you read them at one time?</p> <p>20 A. I can't remember.</p> <p>21 Q. Do you know if they were provided to you?</p> <p>22 A. The minutes of the meeting of the --</p> <p>23 Q. Not the minutes but the trust documents 24 themselves.</p> <p>25 A. I can't remember.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. As long as you have been on the board, 2 has Jeanne Endo been attending meetings and coming 3 in as well?</p> <p>4 A. Yes.</p> <p>5 Q. In addition to those two people, you 6 also have an accountant who does regular audits; 7 is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And provides regular written audit 10 reports?</p> <p>11 A. Yes.</p> <p>12 Q. Are those distributed to the members of 13 the board?</p> <p>14 A. Yes.</p> <p>15 Q. And do you read them?</p> <p>16 A. Yes.</p> <p>17 Q. When you have a -- typically, when you 18 have a meeting of the board of the Mutual Aid Fund 19 Trust, what kind of items are on the agenda? What 20 do you discuss?</p> <p>21 A. We discuss that account, and how much is 22 in there and where the money went to and how much 23 is left, and so forth.</p> <p>24 Q. And do you vote on any matters?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. How often does the Mutual Aid Fund Trust 2 meet?</p> <p>3 A. Maybe once every two to three months.</p> <p>4 Usually after our general meeting. State 5 Executive Board meeting.</p> <p>6 Q. And how many members are there on the 7 Mutual Aid Fund Trust board?</p> <p>8 A. There's VPs from the different islands.</p> <p>9 I think maybe from six to eight members.</p> <p>10 Q. And when the Mutual Aid Fund Trust 11 meets, who actually conducts the meetings?</p> <p>12 A. I do.</p> <p>13 Q. And who prepares the agenda?</p> <p>14 A. Our state director.</p> <p>15 Q. And so that's Dayton Nakanelua?</p> <p>16 A. Yes.</p> <p>17 Q. Does anyone else provide any kind of 18 staffing function for the Mutual Aid Fund Trust?</p> <p>19 A. You're asking does he bring in any other 20 staffing?</p> <p>21 Q. Yes.</p> <p>22 A. Usually, our administrative director of 23 the business office comes in.</p> <p>24 Q. And who is that?</p> <p>25 A. Jeanne Endo.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. What kinds of matters do you vote on?</p> <p>2 A. Whatever is on the agenda. I don't know 3 offhand.</p> <p>4 Q. Since you've been the president, how 5 long, typically, is a meeting of the Board of 6 Trustees of the Mutual Aid Fund Trust?</p> <p>7 A. I'd say about an hour.</p> <p>8 Q. Since you've been there, have there ever 9 been any recommendations that have been brought to 10 the board by the state director, which the board 11 has rejected?</p> <p>12 A. Offhand I can't remember. I can't 13 recall.</p> <p>14 Q. Is it your impression, as you sit here 15 today, that when the state director makes 16 recommendation the board normally goes along with 17 it?</p> <p>18 A. Well, with the information -- it's a 19 real democratic process. Everybody is allowed to 20 give their input, and so forth. And there's -- 21 like I said, what are -- they are going to decide 22 on whatever information that is put upon them. 23 But it's a real open process.</p> <p>24 Q. You were not on the Mutual Aid Fund 25 Trust Board of Directors, Board of Trustees when</p>

<p>1 Gary Rodrigues was the state director; is that 2 correct?</p> <p>3 A. Yes, I wasn't on there.</p> <p>4 Q. But you were on the Executive Board at 5 that time?</p> <p>6 A. Yes.</p> <p>7 Q. Are you aware of some agreement between 8 the Mutual Aid Trust and the UPW by which the UPW 9 provides staff to the Trust? Are you aware of any 10 such agreement?</p> <p>11 A. No.</p> <p>12 Q. Let me show you what I'm going to ask 13 the court reporter to mark as Exhibit 1 for the 14 purpose of this deposition.</p> <p>15 (Whereupon, an Administrative Services 16 Agreement was marked as Exhibit 1 for 17 Identification.)</p> <p>18 Q. Let me put this one before you. That 19 is the one we're going to have the court reporter 20 include in the record.</p> <p>21 I want to ask you after you look at 22 that, is that a document that you've ever seen 23 before?</p> <p>24 A. Not that I know of, no.</p> <p>25 Q. Do you know if the Mutual Aid Fund Trust</p>	Page 18	Page 20
<p>1 pays any money to UPW on a regular basis for 2 administrative services provided to the Trust by 3 UPW?</p> <p>4 A. No.</p> <p>5 Q. You're not aware?</p> <p>6 A. No, I'm not aware.</p> <p>7 Q. Do you know when Mr. Nakanelua or Ms. 8 Endo or any of her staff provides services to the 9 trust, whether the trust compensates them for the 10 time and expenses that they incur?</p> <p>11 A. I don't think so. No. Because they are 12 part of the UPW staff.</p> <p>13 Q. Is it your understanding that the UPW 14 staff provides services to the Trust without the 15 UPW being compensated for those services? Is that 16 your understanding?</p> <p>17 A. I believe so it is.</p> <p>18 Q. Look if you would at this document, 19 Exhibit 1 at section 2.</p> <p>20 A. Section 2, okay.</p> <p>21 Q. And it talks about an administrator of 22 the entity to which this refers which is the 23 United Public Workers Mutual Aid Trust.</p> <p>24 And I want to ask you if, based upon 25 your experience, if Mr. Nakanelua does all of</p>	Page 19	Page 21
<p>1 these things which are listed in section 2?</p> <p>2 (Pause.)</p> <p>3 A. What was your question again?</p> <p>4 Q. My question to you is does this section, 5 A through I, describe in your experience what Mr. 6 Nakanelua does as the administrator for the fund?</p> <p>7 Does he do all those things?</p> <p>8 A. Offhand I can't tell you yes or no.</p> <p>9 Q. Okay. Who handles the money that the 10 fund administers?</p> <p>11 A. Our business office. And they have -- 12 they have an account with a certain bank or 13 whatever that holds the account.</p> <p>14 Q. And do you know who writes checks on 15 those funds?</p> <p>16 A. When a person -- how it works when a 17 person takes out from the MAF, he has to bring 18 hospital documents from the doctor. Then he gets 19 reimbursed so many days from the business office. 20 The business office cuts the checks.</p> <p>21 Q. Let me ask you about investments. If 22 some portion of the money from the Mutual Aid Fund 23 Trust is going to be invested and the board agrees 24 to a particular investment, who actually writes 25 the check?</p> <p>1 A. I don't know.</p> <p>2 Q. Do you know whether the checks have to 3 be countersigned by any of the trustees?</p> <p>4 A. I'm not sure. I don't know.</p> <p>5 Q. Do you know if Dayton Nakanelua or 6 Jeanne Endo are allowed to write checks on funds 7 belonging to the Mutual Aid Fund Trust by 8 themselves?</p> <p>9 A. I don't know. I can't answer that.</p> <p>10 Q. When you make an investment decision as 11 a board currently under your leadership as the 12 chairman, can you describe for me the process by 13 which that decision is made?</p> <p>14 A. What happens is the -- it brings up to 15 the MAF. And then we make -- we act on the 16 information that's given to us. And we vote on it.</p> <p>17 Then after we take it -- we -- the next 18 thing we take it to the State Executive Board for 19 the final approval.</p> <p>20 Q. Is it your understanding that investment 21 decisions pertaining to funds belonging to the 22 Trust have to be approved by the State Executive 23 Board?</p> <p>24 A. Yes.</p> <p>25 Q. And has that been going on as long as</p>		

<p>1 you can remember?</p> <p>2 A. Under the new administration.</p> <p>3 Q. When Mr. Rodrigues was there, were</p> <p>4 decisions made by the Board of Trustees of the</p> <p>5 Mutual Aid Fund Trust taken to the Executive Board</p> <p>6 for approval?</p> <p>7 A. I don't remember.</p> <p>8 Q. What kind of information do you as a</p> <p>9 board receive, speaking now about the Mutual Aid</p> <p>10 Fund, what kind of information do you receive</p> <p>11 about prospective investments to assist you in</p> <p>12 making decisions?</p> <p>13 A. Well, like I -- we haven't -- like I</p> <p>14 say, we haven't really moved the money around, the</p> <p>15 MAF. Usually it just stays there for our</p> <p>16 employees, state, and city, county employees.</p> <p>17 Q. So since you've been on the board there</p> <p>18 have been no investment decisions. Is that fair</p> <p>19 to say?</p> <p>20 A. I don't remember any.</p> <p>21 Q. Are you familiar with a person by the</p> <p>22 name of Albert Hewitt?</p> <p>23 A. I heard that name. But I'm not really</p> <p>24 familiar with him.</p> <p>25 Q. When you were on the Executive Board did</p>	Page 22	Page 24
<p>1 you ever receive any reports or any information</p> <p>2 about Mr. Hewitt?</p> <p>3 A. I heard about his name. We might</p> <p>4 have. But offhand, no. But I've heard about Mr.</p> <p>5 Hewitt.</p> <p>6 Q. Do you know anything about the process</p> <p>7 by which Mr. Hewitt came to handle certain monies</p> <p>8 for UPW and/or for the Mutual Aid Fund Trust?</p> <p>9 A. No.</p> <p>10 Q. Do you have any knowledge about any</p> <p>11 decisions that were made with respect to an</p> <p>12 investment of funds in an entity called Best</p> <p>13 Rescue?</p> <p>14 A. No.</p> <p>15 Q. You were not on the board when any</p> <p>16 investments were made?</p> <p>17 A. I wasn't a -- the Mutual Aid. I was</p> <p>18 just on the state executive.</p> <p>19 Q. Going back down to your service on the</p> <p>20 State Executive Board, do you recall any</p> <p>21 discussion at any time about an entity by the name</p> <p>22 of Best Rescue?</p> <p>23 A. I might have. But offhand I couldn't</p> <p>24 remember the date. I would have to check that</p> <p>25 previous meetings of the State Executive Board.</p>	Page 23	Page 25

<p>1 Q. And that's AFSCME; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And do you know what the legal basis</p> <p>4 was for taking over the Mutual Aid Fund Trust as</p> <p>5 opposed to the local union itself?</p> <p>6 A. No.</p> <p>7 Q. Did anyone ever receive any</p> <p>8 justification or authority from the union,</p> <p>9 national union, for taking over the Mutual Aid</p> <p>10 Fund Trust as opposed to administering UPW local</p> <p>11 union itself?</p> <p>12 A. No, sir.</p> <p>13 Q. During the period of time that the</p> <p>14 Mutual Aid Fund Trust was taken over and</p> <p>15 administered by AFSCME, who was responsible</p> <p>16 for operating the Mutual Aid Fund Trust, do you</p> <p>17 know?</p> <p>18 A. Usually the business office handles all</p> <p>19 those transactions. But usually it depends on the</p> <p>20 member. He brings in his paperwork and if -- once</p> <p>21 he gets reimbursed he has to have all his</p> <p>22 paperwork in order. Then he gets reimbursed by</p> <p>23 the business office.</p> <p>24 Whether that account was put on hold</p> <p>25 under the receivership, I don't know. I wasn't</p>	Page 26	Page 28
	Page 27	Page 29

1 part of the MAF group.

2 Q. When was the board reinstated, the Board

3 of Trustees of the Mutual Aid Fund Trust, when

4 were they reinstated after the receivership? Do

5 you know?

6 A. I think we were on the receivership for

7 about a year.

8 Q. When the board was reinstated were you

9 then on the board at that time, from the time that

10 it was reinstated?

11 A. That was after our state elections, I

12 believe.

13 Q. What was after your state elections?

14 A. After when we had our state elections

15 and the top officers were elected, asked them --

16 well, after that we were taken off the

17 administratorship.

18 Q. You were already the president of UPW

19 and then by virtue of that position, the

20 Chairperson of the Mutual Aid Fund Trust when

21 control over that entity was turned back to the

22 local union. Is that fair to say?

23 A. That's usually how it works, yes.

24 Q. When the responsibility for the Mutual

25 Aid Fund Trust was turned back to the union, was

1 recognize?

2 (Pause.)

3 A. All right. Yeah, I recognize it.

4 Q. What is that document?

5 A. It's part of the MAF meeting at the Ala

6 Moana Hotel.

7 Q. To the best of your knowledge, is this a

8 true and accurate copy of the minutes of the

9 meeting that was conducted on May 23, 2004?

10 A. I believe it is.

11 Q. And at that time on May 23, 2004 was the

12 individual whose signature appears here the

13 secretary who was responsible for keeping the

14 minutes?

15 A. Yes.

16 Q. And you were the president; is that

17 correct?

18 A. Yes, sir.

19 Q. Now, if you look down at item 3 it

20 indicates that Jeanne Endo and Chip Uwaine were

21 both also present; is that correct?

22 A. Usually they are at our meetings, the

23 two of them.

24 Q. If you look at the next item, paragraph

25 4, it says, "state director." Is that referring

<p>1 to Dayton Nakanelua?</p> <p>2 A. So where are you at?</p> <p>3 Q. The first page. Item 4, A. It says,</p> <p>4 "state director."</p> <p>5 A. Yes.</p> <p>6 Q. That's referring to Dayton?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Presumably, what that means is that</p> <p>9 Dayton was handling these items on the agenda; is</p> <p>10 that correct?</p> <p>11 A. Yeah.</p> <p>12 Q. So the first item was some item having</p> <p>13 to do with the high degree of responsibility of</p> <p>14 trustees; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Can you amplify or explain to me what</p> <p>17 was discussed under that topic?</p> <p>18 A. I can't remember offhand. Just -- well,</p> <p>19 from looking at it, it's just that -- he's just</p> <p>20 telling us the responsibilities of being part of</p> <p>21 the MAF group, the board.</p> <p>22 Q. Okay. Then if you would look down at</p> <p>23 number 7. It says, "litigation."</p> <p>24 A. Yes.</p> <p>25 Q. "UPW versus Gary Rodrigues." That's</p>	Page 30	Page 32
<p>1 this case; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And it says under there, "\$1.1 million</p> <p>4 loan to Best Rescue system." Do you see that</p> <p>5 there?</p> <p>6 A. Yes.</p> <p>7 Q. Do you remember what Mr. Nakanelua</p> <p>8 reported to the board when he talked about that</p> <p>9 particular loan?</p> <p>10 A. No, I don't remember.</p> <p>11 Q. It says here that the "loan was approved</p> <p>12 without due diligence (risky company) by former</p> <p>13 trustees." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. What did Mr. Nakanelua say about that?</p> <p>16 A. I don't remember.</p> <p>17 Q. Did you ever ask?</p> <p>18 A. I might have. But like I said, this is</p> <p>19 2004. We're in 2007 right now. I can't remember.</p> <p>20 Q. Well, let me ask you this, Mr. DeCosta.</p> <p>21 If in fact the loan was approved without due</p> <p>22 diligence, that it was a risky company, and that</p> <p>23 that action was taken by the former trustees, why</p> <p>24 aren't they being sued?</p> <p>25 A. I'm not sure. I couldn't say.</p>	Page 31	Page 33

	Page 34	Page 36
1	A. Yes.	1 Q. Have you had a chance to look at it?
2	Q. Do you know if Alison Leong voted on	2 A. Just briefly.
3	that particular motion?	3 Q. Have you ever seen this letter before?
4	A. I'm not sure.	4 A. I don't remember. I don't think so.
5	Q. There is no indication that she recused	5 Q. Do you know who the author of the letter
6	herself, is there?	6 is, Larry Weinberg?
7	A. Yes, there is no.	7 A. Yes, I've met Mr. Weinberg. He's part
8	Q. Did you vote on that particular motion?	8 of AFSCME.
9	A. Usually we'll vote but it doesn't	9 Q. He's the general counsel?
10	signify that I did or not.	10 A. Yes.
11	Q. Do you recall voting to ratify the	11 Q. You've never seen this letter, to the
12	actions to continue the lawsuit?	12 best of your recollection?
13	A. No.	13 A. No.
14	Q. You don't recall. Do you recall any	14 Q. Is one of the things that Mr. Weinberg
15	reasons that were given why anybody voted to	15 does is to give legal advice to UPW and in this
16	ratify the decision to continue the lawsuit	16 case to the Mutual Aid Fund Trust? Is that what
17	against Mr. Rodrigues?	17 his duties include?
18	A. I believe they voted because they wanted	18 A. I'm not sure. But we've used the
19	to see if they could have the money -- get	19 services in the past. Because they are our parent
20	recovery of some of this \$1.1 million.	20 union.
21	Q. As you sit here today, do you have any	21 Q. You've used his services for what kinds
22	knowledge or any reason to believe that Gary	22 of things in the past?
23	Rodrigues had any responsibility for the	23 A. He's come to our meetings, our state
24	investment that went bad that is the subject	24 convention meetings.
25	matter of this lawsuit?	25 MR. SEITZ: Okay, Mr. DeCosta. I think
	Page 35	Page 37
1	A. Only that he was the state director at	1 I'm done. Thank you.
2	the time. Are you finished with this one?	2 (Deposition concluded at 10:15 a.m.)
3	Q. Yes. You are now the named plaintiff in	3
4	this case; is that correct?	4
5	A. Yes.	5
6	Q. When were you first approached to	6
7	become the named plaintiff?	7
8	A. A few months back.	8
9	Q. And what is your understanding about why	9
10	you are the named plaintiff?	10
11	A. Something about it was legally that they	11
12	couldn't have all these people on that. I would	12
13	be, since I'm the Chairperson of the committee.	13
14	Q. Prior to the time when you were	14
15	actually named as the lead plaintiff in this case	15
16	or named plaintiff, had there ever been any	16
17	discussion about naming you as the plaintiff	17
18	previously?	18
19	A. No.	19
20	Q. Let me then lastly show you what I'm	20
21	going to have the court reporter to mark as	21
22	Exhibit 3.	22
23	(Whereupon, a May 12, 1994 letter was	23
24	marked as Exhibit 3 for Identification.)	24
25	(Pause.)	25

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1 I, STEVEN DE COSTA, hereby certify that  
2 I have read the foregoing typewritten pages; and  
3 corrections, if any, were noted by me; and the  
4 same is now an accurate and complete transcript of  
5 my testimony.

6

7 Dated at \_\_\_\_\_ Hawaii  
8 this \_\_\_\_\_ day of \_\_\_\_\_, 2007

9

10

11 STEVEN DE COSTA

12

13

14 Signed before me this \_\_\_\_\_ day  
15 of \_\_\_\_\_, 2007.

16

17

18 Witness to Deponent's Signature

19

20

21

22 Steven De Costa, et al. vs. Gary W. Rodrigues  
23 Civil No. 03-00598 DAE/LEK, September 28, 2007  
24 by William T. Barton, RPR, CSR.

25

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1 CERTIFICATE

2 STATE OF HAWAII )  
3 ) SS.  
4 COUNTY OF HONOLULU )

5 I, WILLIAM T. BARTON, RPR, Certified  
6 Shorthand Reporter, State of Hawaii, do hereby  
7 certify that on September 28, 2007 at 9:30 a.m.  
8 there appeared before me STEVEN DE COSTA, the  
9 witness whose deposition is contained herein; and  
10 that prior to being examined was duly sworn; that  
11 I am neither counsel for any of the parties  
12 herein, nor interested in any way in the outcome  
13 of this action;

14 That the deposition herein was by me taken  
15 down in machine shorthand and thereafter reduced  
16 to print via computer-aided transcription under my  
17 supervision; that the foregoing represents a  
18 complete and accurate transcript of the testimony  
19 of said witness to the best of my ability.

20 Dated this 2nd day of October 2007 at  
21 Honolulu, Hawaii.

22

23 WILLIAM T. BARTON, CSR No. 391  
24 Notary Public, State of Hawaii  
25 My Commission expires August 7, 2009